

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

R. Ceasar,

Case No. 18-cv-2350 (JNE/ECW)

Plaintiff,

v.

ORDER

Capella University; Richard Senese; and
Thomas Poulon,

Defendants.

Plaintiff R. Ceasar (“Ceasar”) initiated this action by filing a complaint naming Capella University, Richard Senese, and Thomas Poulon as defendants. (*See* Dkt. No. 1.) Senese and Poulon were dismissed without prejudice for lack of allegations in the complaint that those individuals personally had violated the law. (*See* Dkt. No. 9 (Amended Order of Dismissal); 28 U.S.C. § 1915(e)(2)(B) (authorizing pre-service dismissal).) Ceasar was permitted to proceed *in forma pauperis* as to his claims against Capella University, and service of process was ordered to be effected on that defendant. (Dkt. No. 9.)

Ceasar has since filed what he labels as an “Emergency Amended Complaint” once again naming Senese and Poulon (along with Capella University) as defendants. (*See* Dkt. No. 10.) A litigant may amend his pleading once as a matter of course before service of process is effected (or within 21 days of service). *See* Fed. R. Civ. P. 15(a)(1).

Accordingly, the Amended Complaint (Dkt. No. 10) is now the operative pleading in this matter, and Senese and Poulon are once again parties to this action.

The Amended Complaint, unlike the original complaint, includes specific factual allegations regarding the actions of Senese and Poulon that Ceasar alleges violated the law. This Court will therefore order that service of process be effected on Senese and Poulon, consistent with 28 U.S.C. § 1915(d). Nothing in this order precludes Defendants from seeking dismissal of this action pursuant to Rule 12 of the Federal Rules of Civil Procedure. Defendants should address Ceasar's request for preliminary injunctive relief, as found in the Amended Complaint, simultaneous with their filing of an answer, motion to dismiss, or other responsive pleading.

Finally, Ceasar also requests that this matter be expedited and scheduled for trial. (*See* Dkt. No. 11.) Nothing submitted by Ceasar establishes that this matter is any more urgent than thousands of other lawsuits pending in this District currently, or that deviation from the ordinary manner of proceeding would be appropriate. His motion for scheduling of trial is denied.

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS ORDERED THAT:**

1. Plaintiff R. Ceasar must submit a properly completed Marshal Service Form (Form USM-285) for defendants Richard Senese and Thomas Poulon. If Ceasar does not complete and return the Marshal Service Forms within 30 days of this order, it will be recommended that Senese and Poulon be

dismissed without prejudice for failure to prosecute claims against them.

Marshal Service Forms will be provided to Ceasar by the Court.

2. After the return of the completed Marshal Service Forms, the Clerk of Court is directed to seek waiver of service from defendants Richard Senese and Thomas Poulon, consistent with Rule 4(d) of the Federal Rules of Civil Procedure.
3. If a defendant fails without good cause to sign and return a waiver within 30 days of the date that the waiver is mailed, the Court will impose upon that defendant the expenses later incurred in effecting service of process. Absent a showing of good cause, reimbursement of the costs of service is mandatory and will be imposed in all cases in which a defendant does not sign and return a waiver of service form. *See* Fed. R. Civ. P. 4(d)(2).
4. Ceasar's motion for scheduling of trial (Dkt. No. 11) is **DENIED**.

DATED: January 16, 2019

s/Elizabeth Cowan Wright
ELIZABETH COWAN WRIGHT
United States Magistrate Judge